



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha13020954

██████████,
Complainant,

v.

NACHI TECHNOLOGY, INC.,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On February 15, 2013, ██████████ (“Complainant”) filed a Complaint with the Commission against Nachi Technology, Inc. (“Respondent”) alleging discrimination on the basis of disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) ██████████

██████████ Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was terminated because of disability. In order to prevail, Complainant must show that (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting Respondent’s legitimate business expectations; and (4) similarly-situated employees without disabilities were treated more favorably under similar circumstances.

It is evident that Respondent perceived Complainant to have a disability as the term is defined under the applicable laws. Further, while there is sufficient evidence that Complainant was meeting Respondent’s legitimate business expectations, Respondent terminated his employment.



By way of background, Respondent hired Complainant on or about March 7, 2012 as a machine operator. At all times relevant to the Complaint, Respondent maintained an associate handbook and policies related to attendance. Specifically, Respondent's attendance policy required employees to be at their work stations by the start of each shift and to work at least 97% of their scheduled workdays. While employees are not penalized for qualifying events under its various leave programs, they are penalized for falling below the 97% threshold. Additionally, Respondent follows a progressive discipline policy where the first occurrence results in a written verbal warning, the second occurrence results in a written warning requiring the associate's signature, the third occurrence results in a final warning stating that the associate's job is in jeopardy and requiring the associate's signature, while the fourth occurrence results in termination. Complainant was aware of these policies and procedures as contained in the associate handbook as evidenced by his signature of an acknowledgment of such on or about March 7, 2012.

During the course of Complainant's employment, Respondent was aware that Complainant suffered from a hernia and was in the process of scheduling a surgery to address the issue. Specifically, Respondent's Human Resources Manager admitted that she was aware that Complainant was contemplating hernia surgery as early as September 2012. Despite Respondent's assertions that it verbally counseled Complainant for various performance issues during the course of his employment, including but not limited to using profanity toward a co-worker, failing to follow instruction, and revving the engine of company equipment, no evidence has been provided to substantiate these claims. Rather, the evidence shows that Respondent never documented the alleged verbal counseling sessions or issued any written discipline to make him aware of his alleged violations at the time of their occurrence in direct contravention of its own progressive discipline policies. Further, Respondent's Human Resources Manager alleges that she "tried to give Complainant the benefit of the doubt and not place things in his file," despite Respondent's progressive discipline policy establishing the proper method by which to issue corrective action.

Moreover, Respondent's Human Resources Manager admits that after learning of Complainant's need to obtain surgery, she told him that he could quit his job (providing two weeks' notice), have the surgery, heal, and reapply when he was able to return to work. While the parties dispute the exact date, evidence shows that Respondent presented Complainant with a list of alleged policy violations that had occurred in the past several months immediately before his termination. Ultimately, on or about January 30, 2013, Respondent informed Complainant that he was terminated, the day before his hernia surgery scheduled for January 31, 2013.

Despite Respondent's assertions, there is sufficient evidence to show that its rationale for Complainant's termination is unworthy of credence and may amount to pretext for unlawful discrimination on the basis of perceived disability. Specifically, Respondent failed to comply with its own progressive discipline policy with respect to Complainant; moreover, no evidence of written discipline alerting Complainant that his job was in jeopardy has been uncovered

during the course of the investigation. As such and based upon the foregoing, probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

June 25, 2014

Date

Akia A. Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission